

Smart Hiring

An employer's guide to criminal background checks

Criminal background checks alone are not a good measure of a person's suitability for a job. The Equal Employment Opportunity Commission (EEOC) has set out guidance* regulating the use of criminal background checks to ensure fairness in the hiring process.

✓ **Employers must be consistent if background checks are considered in hiring.**

If you use background checks you must do them for all applicants consistently or a violation of Title VII of the Civil Rights Act could occur. Background checks should never be given based on race, national origin, gender or other protected group membership.

✓ **Applicants should have the chance to correct wrong information.**

Applicants should be informed if something was found that makes them ineligible for the position because background checks can contain inaccurate or incomplete information. This way, applicants can provide correct and updated information, including any efforts of rehabilitation.

✓ **Charges that did not lead to convictions should not be considered.**

In other words, a record of an arrest without a conviction should not be used to disqualify a job applicant. Employer may consider the conduct underlying the arrest if the conduct makes the individual unfit for the position in question. The conduct, not the arrest, is relevant for employment purposes.



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✓ **Blanket do-not-hire policies for anyone with a criminal record may violate Title VII of the Civil Rights Act.**
It is important to look at job relatedness and business necessity. The EEOC encourages employers to develop a targeted applicant screening that considers:

- The nature of the crime
- The time passed since the crime occurred
- The nature of the job
- An individualized assessment for those people identified by the screen to determine if the policy as applied is job related and consistent with business necessity

✓ **Public sector employers by Washington State law, cannot discriminate on the basis of a criminal record alone.**

Employers can deny employment based on a criminal record if less than 10 years have passed since the date of the conviction and if the conviction relates to the job. Law enforcement agencies are exempt, as are some jobs working with children and vulnerable adults depending on conviction.

** EEOC Guidance applies to employers with 15 or more employees however these guidelines are good practice for all employers to follow.*



Learn more about the EEOC Guidance at:
http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm.

For more information contact us:

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